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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's	)	MM Docket No. 91-221
Regulations Governing Television	)	
Broadcasting	)	

ORIGINAL
FILE

COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

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SUMMARY

NTIA supports the Commission's efforts to remove or modify some of its longstanding rules that have shaped the structure of the broadcast television industry. Most of these regulations were enacted when Americans had few viewing choices and broadcasters faced little competition. However, the domestic mass media marketplace has become complex and robust, with numerous different types of delivery systems and myriad sources of programming available to consumers. As a result, the concerns about undue economic concentration and diversity that provided the original bases for the rules have lessened substantially. The Commission should therefore revise its rules to reflect the current video marketplace and to enable broadcasters to compete more efficiently against each other, cable and other multichannel video providers, and other sources of video entertainment and information.

With respect to the national multiple ownership rule, NTIA recommends that the Commission eliminate the rule entirely. Removal of the multiple ownership limits would permit broadcasters to realize economic efficiencies without jeopardizing competition or viewpoint diversity. If the Commission considers immediate elimination of the national multiple ownership rule too dramatic a change in its current regulation of the broadcast television industry, NTIA recommends that the Commission adopt a phased approach, and increase the limits every two years, after review of marketplace conditions.

NTIA supports the Commission's proposal to change the duopoly rule in order to promote more efficient local broadcast operations. While conditions in some local markets may warrant elimination of the rule, we recommend, out of an abundance of caution, that the Commission narrow the rule but retain some limits. Rather than adopt any of the options set forth in the Notice, the Commission should base a narrowed rule on whether the combined audience share of the commonly-owned stations exceeds a maximum threshold. Such an approach, perhaps combined with a criterion based on the number of unaffiliated stations remaining in the market, would better address the Commission's competition and diversity concerns.

NTIA supports the Commission's proposal to eliminate the radio-television crossownership rule. Because of the large number of additional programming outlets available in virtually all parts of the United States, the one-to-a-market rule is no longer necessary to promote diversity of programming in the local market. The local multiple ownership rules for broadcast television and radio are sufficient.

NTIA also supports the Commission's proposal to modify the dual network rule to permit networks to provide multiple programming channels within their affiliates' existing channel assignments. This would allow networks to make more efficient use of their affiliates' distribution systems while permitting the broadcast industry to experiment with more innovative and highly-targeted programming services.

Lastly, NTIA supports the Commission's proposal to eliminate the rule prohibiting a network from owning stations in smaller markets. This rule has become outdated due to the considerable growth in the number of programming sources, both broadcast and cable, since the rule's adoption.

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In the Matter of	)	
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Review of the Commission's Regulations Governing Television Broadcasting	)))	MM Docket No. 91-221

COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

The National Telecommunications and Information Administration (NTIA), as the Executive branch agency principally responsible for the development and presentation of domestic and international telecommunications and information policy, respectfully files these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.[1/]

I. INTRODUCTION

NTIA supports the Commission's initiative in this proceeding to recast its regulations applicable to the broadcast television industry. Most of these regulations -- the national multiple ownership rule, the local multiple ownership (or "duopoly") rule, the radio-television crossownership (or "one-to-a-market") rule, the dual network rule, and others -- were enacted when Americans had fewer viewing choices and broadcasters faced little competition. However, the domestic mass media marketplace has

1/ Review of the Commission's Regulations Governing Television Broadcasting, Notice of Proposed Rulemaking, 7 FCC Rcd 4111 (1992) (Notice).

become complex and robust, with numerous types of delivery systems and an explosion of programming available to U.S. audiences. As a result, the concerns about economic concentration and diversity that provided the original bases for the rules have lessened substantially.

In particular, because of today's highly competitive mass media marketplace, the present rules can be eliminated or substantially narrowed without causing undue concentration among television broadcasters. The antitrust laws, of course, remain available to guard against acquisitions that would result in an industry structure that could threaten competition. With certain limited exceptions, it is simply unnecessary for the Commission to impose a special set of structural rules on the television broadcast industry on grounds of safeguarding economic competition.

Nor will elimination or substantial narrowing of the present structural rules impede realization of the Commission's diversity goals. Numerous viewpoints are already available to Americans through a wide variety of media in addition to broadcast television. Furthermore, as a practical matter, many of the Commission's current structural rules have little effect on the availability of diverse viewpoints within the television broadcast industry itself.

Moreover in NTIA's view, most of the Commission's current rules are not only unnecessary, they are counterproductive. Given the fierce competition for programming and viewers among broadcasters and other media, extensive Commission regulation of this industry's structure and the permissible business relationships among broadcast entities can impair broadcasters' economic competitiveness. By handicapping the providers of free, over-the-air television, such regulation ill serves the viewing public. Also, to the extent that the current rules limit the efficiencies that broadcasters can realize in delivering information to American homes, the rules disserve the Commission's viewpoint diversity goals. In contrast, by revising its rules to reflect the current video marketplace, the Commission would enable broadcasters to compete more efficiently against each other, cable and other multichannel video providers, and other sources of video programming. A stronger, more competitive broadcast industry would be the likely result, an outcome that would further the Commission's public interest goals.

As importantly, the Commission's structural rules should be viewed against the backdrop of the coming of advanced television (ATV). Some of the assumptions used to justify the current rules, such as the distinction between UHF and VHF broadcast stations, may no longer be as important in a video world moving toward ATV. The Commission's planned transition to ATV could result in television broadcasters incurring substantial costs that they could more easily bear if they are able to realize economic efficiencies that modification of these rules would permit.

II. THE NATIONAL TELEVISION MULTIPLE OWNERSHIP RULE IS UNNECESSARY AND SHOULD BE ELIMINATED

The Commission proposes to modify the national multiple ownership rule,[2] which generally prohibits a broadcaster from owning more than twelve television stations nationwide, or television stations with a combined national audience in excess of twenty-five percent.[3] Specifically, the Commission seeks comment on whether to increase the numerical cap from twelve to twenty, or twenty-four stations, while increasing the audience reach cap to thirty-five percent of the national audience; increase the numerical cap to eighteen stations with an audience reach limit of thirty percent; or increase the numerical limit

2/ 47 C.F.R. § 73.3555(d) (1991). Under the FCC's attribution rules, any entity with a direct ownership interest in at least five percent of the outstanding voting stock of a corporate broadcast licensee generally is considered to have an attributable ownership interest. Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities, 97 FCC 2d 997 (1984).

3/ The rule seeks to promote minority ownership by allowing group owners to own up to 14 television stations, with an aggregate national audience share of up to 30%, so long as at least two of the stations are minority-controlled. Amendment of Section 73.3555 of the Commission's Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Memorandum Opinion and Order, 100 FCC 2d 74, 94 (1985).

alone, while retaining the twenty-five percent audience reach cap.[4/]

NTIA supports the Commission's efforts to liberalize the television multiple ownership rule. Indeed, we recommend that the Commission eliminate this rule. The original rationales underlying adoption of national ownership caps -- that such limits are necessary to prevent undue economic concentration and promote diversity of programming -- no longer apply in today's video marketplace.

By traditional antitrust standards, the national television broadcast industry is extremely unconcentrated. In 1991, according to the National Association of Broadcasters (NAB), the Herfindahl-Hirshman Index (HHI) -- the antitrust guideline used by the Department of Justice (DOJ) to measure concentration when evaluating potential mergers within an industry -- was 187, based on audience share for the entire television industry.[5/] In 1991,

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4/ Notice, 7 FCC Rcd at 4114. The Commission also seeks comment on whether it should retain an incentive for minority ownership, if it decides to modify the national ownership rule for the television service. Id.

5/ Comments of the National Association of Broadcasters at 26 (filed Nov. 21, 1991) in Review of the Policy Implications of the Changing Video Marketplace, Notice of Inquiry, 6 FCC Rcd 4961 (1991) (Television NOI) (NAB Television Comments).

The HHI is calculated by summing the squares of the market shares of the firms within a particular industry. According to DOJ, markets with an HHI below 1,000 are "unconcentrated," markets with an HHI between 1,000 and 1,800 are "moderately concentrated," and markets with an HHI there were about 200 group owners of broadcast television stations in the United States.[6] Of these, only two (Home Shopping Network and Trinity Broadcasting Network) are at the current station ownership limit, although several are near the twenty-five percent national audience reach cap.[7] These national industry characteristics reinforce our belief that the antitrust laws are adequate to address competition concerns.

As to the diversity effects of the national multiple ownership rules, we support the Commission's analysis performed in 1984, when it modified the predecessor to the current national

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over 1,800 are "highly concentrated."

In 1983, when the Commission last considered modifying the national ownership rule, the Commission staff determined an HHI of 229 for the top twelve television groups, based on revenue share, and CBS calculated a HHI of 115 for all stations in the national television market based on audience share. Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Report and Order, 100 FCC 2d 17, 42 (1984) (1984 Multiple Ownership Report and Order). All of these indices are far below DOJ's threshold for even a moderately concentrated industry.

6/ See 1992 Television & Cable Factbook, at A-1409 to A-1443; see also Group Ownership on the Rise, Broadcasting, Feb. 11, 1991, at 69, 71.

7/ The top television group owners as of early 1992 were Capital Cities/ABC Inc. (seven VHF stations, one UHF station, 23.83% audience reach); CBS Inc. (seven VHF stations, 22.12% audience reach); National Broadcasting Company, Inc. (six VHF stations, 20.38% audience reach); Tribune Broadcasting (four VHF stations, three UHF stations, 19.50% audience reach); Home Shopping Network Communications (twelve UHF stations, 18.66% audience reach); and Trinity Broadcasting Network (twelve UHF stations). See Networks Still Tops in TV Group Ownership, Broadcasting, Mar. 30, 1992, at 47; 1992 Television & Cable Factbook, at A-1439.

ownership limits.[8] There, the Commission noted that each American obtains information from whatever media are available in his or her local community -- radio, broadcast television, cable television, newspapers, and magazines.[9] Although program production markets are national, and indeed increasingly international, broadcast television stations serve viewers in their localities. Ownership of more than twelve stations scattered across the country does nothing to affect program diversity in those individual local markets.

We do not accept the argument that national ownership limits promote viewpoint diversity by preventing a single owner from speaking with the same voice in numerous local markets. The number of information sources in the United States has grown significantly since the rule was changed in 1984 from a seven station limit to its current form, making it extremely unlikely that any group owner could "homogenize" nationally the information that Americans receive. In 1984, there were 1,138 full power television stations (841 commercial and 297 educational),[10] 327 low power television stations,[11] and 8,864

8/ 1984 Multiple Ownership Report and Order, 100 FCC 2d at 37, 54.

9/ Id. at 27 ("[V]iewers in San Francisco, St. Louis and Philadelphia each judge viewpoint diversity by the extent of sources of ideas available to them, not by whether those same or other ideas are available in other broadcast markets.").

10/ 1988 Television & Cable Factbook, at C-299.

radio stations (4,747 AM and 4,717 FM);[12/] today, there are 1,500 full power television stations (1,140 commercial and 360 educational), 1,284 low power television stations, and 11,233 radio stations (4,969 AM and 6,264 FM).[13/] In 1985, cable television systems passed seventy-six percent of the nation's homes and forty-three percent of households subscribed;[14/] today, cable passes over ninety percent of U.S. households, and over sixty percent of all households subscribe.[15/] In 1985, there were sixty-seven cable networks nationwide;[16/] now, there are more than eighty national basic cable networks,[17/] and, if regional ones are included, over one hundred networks.[18/] In

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11/ Broadcasting Yearbook 1986, at C-81 to C-85.

12/ 1984 Multiple Ownership Report and Order, at 27-28.

13/ Broadcast Station Totals as of July 31, 1992, FCC News Release No. 24341 (Aug. 11, 1992).

14/ F. Setzer & J. Levy, Broadcast Television in a Multichannel Marketplace, 6 FCC Rcd 3996, 4044, at Table 15 (FCC Office of Plans and Policy Working Paper #26, 1991) (Broadcast Television Report).

15/ Revision of Radio Rules and Policies, Report and Order, 7 FCC Rcd 2755, 2757 (1992), recon. pending (Radio Report and Order); Comments of National Broadcasting Company, Inc. at 18 (filed Nov. 21, 1991) in Television NOI (NBC Television Comments).

16/ Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, 5 FCC Rcd 4962, 4966 (1990).

17/ Radio Report and Order, 7 FCC Rcd at 2757-58.

18/ See Notice, 7 FCC Rcd at 4112.

1985, twenty-one percent of all households had a video cassette recorder (VCR); today, seventy-three percent do.[19]

As a practical matter, group-owned stations have spoken with local voices, not as mouthpieces for a monolithic national voice. It appears to be industry practice that group-owned stations exercise local autonomy over local news and public affairs programming.[20] There is no reason to think that this practice will change. Moreover, network and group-owned stations are more likely to provide more local news and public affairs programming than independents.[21]

Even as the concerns that first motivated adoption of the rule have diminished, the benefits of group ownership have become clearer, as documented by the Commission[22] and others.[23] For

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19/ Broadcast Television Report, 6 FCC Rcd at 4066, at Table 20; NBC Television Comments, supra note 15, at 19.

20/ Comments of CBS, Inc. at 16 (filed Nov. 21, 1991) in Television NOI (CBS Television Comments); see also NBC Television Comments, supra note 15, at 22-23 .

21/ CBS Television Comments, supra note 20, at 16-17.

22/ See Radio Report and Order, 7 FCC Rcd at 2766-67; 1984 Multiple Ownership Report and Order, 100 FCC 2d at 45; see also Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules, Second Report and Order, 4 FCC Rcd 1741, 1746 (1989) (1989 Multiple Ownership Second Report) (efficiencies stemming from joint ownership in the same market).

23/ See, e.g., 1 Final Report of the Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership and Regulation 432 (1980) (Network Inquiry); NAB Television Comments, supra note 5, at 18-30; NBC Television instance, group-owned stations realize efficiencies from consolidated management, financial, legal, and other administrative functions. Group-owned stations also realize efficiencies from group advertising sales and program purchases. These increased economies of scale permit the production of higher quality programming, which directly benefits American viewers.

For group owners that also operate programming networks, the principal effect of the present national ownership rule is to limit effectively the extent to which those networks may engage in downstream vertical integration into local distribution outlets, by limiting the number of owned-and-operated stations that they may acquire. It has long been recognized that such vertical integration may create efficiencies by reducing transaction costs,[24/] and is critical to operation of a viable

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Comments, supra note 15, at 56-59; Comments of Capital Cities/ABC, Inc. at 20-25 (filed Nov. 21, 1991) in Television NOI (CapCities/ABC Television Comments); CBS Television Comments, supra note 20, at 19-22; Comments of Tribune Broadcasting Company at 13-14 (filed Nov. 21, 1991) in Television NOI. See also Groups Back FCC's Review of Ownership Caps, Broadcasting, May 6, 1991, at 34 (President of Heritage Media states that the rules prevent broadcasters from obtaining a "critical mass" of stations; Great American notes that in order to compete against cable, telcos, international organizations, and satellite-delivered services, "local broadcasters need to be able to get to a critical size that will allow them to operate successfully").

24/ See Network Inquiry, supra note 23, at 399.

broadcast network.[25] The national multiple ownership rule unnecessarily restrains networks and other group owners from realizing efficiencies that permit them to compete effectively against vertically integrated cable operators and networks, which are free from similar restrictions.

Greater vertical integration between networks and affiliate broadcasters also may benefit broadcast stations and, through them, viewers of those stations. Networks have incentives to provide greater benefits to their owned-and-operated stations than they do their affiliates because the overall profitability of the owned-and-operated stations directly affects the networks.[26] For instance, CBS states that its owned-and-operated stations have enhanced access -- beyond that provided to

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25/ See, e.g., Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Notice of Proposed Rulemaking, 95 FCC 2d 360, 368 (1983) (1983 Multiple Ownership NPRM) (citing Amendment of Section 3.363 of the Commission's Rules and Regulations Relating to Multiple Ownership of Television Broadcast Stations, 43 FCC 2797, 2801-02 (1954)).

26/ See Reply Comments of Capital Cities/ABC, Inc. at 4, n.4 (filed Apr. 7, 1992) in Amendment of Part 76, Subpart J, Section 76.501 of the Commission's Rules Relative to Elimination of the Prohibition on Common Ownership of Cable Television Systems and National Television Networks, Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 586 (1991) (CapCities/ABC's eight owned stations "consistently produce by far the lion's share" of the company's operating profit each year); Media Ownership: Diversity and Concentration: Hearings Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science, and Transportation, 101st Cong., 1st Sess. 139-40 (1989) (Media Ownership) (statement of NBC CEO Robert C. Wright) (profits of network owned-and-operated stations help support the company).

non-owned CBS affiliates -- to CBS News materials, personnel, and technical facilities.[27] To the extent that vertical integration through ownership helps local stations remain viable and broadcast superior programming, viewpoint diversity is strengthened.

Some might argue that the fact that only a few groups have reached, or are even close to reaching, the limits imposed by the current national television multiple ownership rule demonstrates that firms are unlikely to achieve greater efficiencies through repeal or further liberalization of the rule. However, there is no precise means to determine the "optimal" degree of vertical integration or horizontal concentration in the broadcast industry. It is possible that firms may not realize significant additional efficiencies by owning twelve stations as opposed to, say, nine stations. It may be as likely that firms would realize significantly greater efficiencies if they could own thirty stations, for instance, instead of twelve.[28] More importantly, regardless of the extent to which liberalization of the rule

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27/ CBS Television Comments, supra note 20, at 19-22.

28/ In 1991, a group of over 30 independent stations formed a consortium to acquire programming collectively from Warner Bros. Domestic Television Distribution. See McClellan, 'Kung Fu,' 'Time Trax' Set for 1993, Broadcasting, Feb. 17, 1992, at 26. The fact that these stations, including several station groups, have formed a consortium suggests that additional efficiencies may be obtained above the current limit. It may be the case that a number of those groups that currently fall shy of the 12 station limit for television would be interested in merging with another group, if the rule were relaxed or eliminated.

would result in groups growing beyond their current size, there is little reason to retain a rule that is no longer necessary.[29] For these reasons, we believe that the Commission should eliminate the multiple ownership rule immediately.[30]

29/ As we have shown, removal of the rule would not jeopardize competition or viewpoint diversity. Moreover, if the market, not the rule, is constraining the size of group owners, the rule serves no function. Repealing the rule would only affect the industry's structure to the extent that owning more than 12 stations would increase the efficiency of certain group owners' operations, and the rule is inhibiting those pro-efficiency ownership arrangements from taking place.

30/ NTIA believes that the effect of Commission regulations on small businesses, particularly those owned by new entrants and minority firms, is an important consideration, and that increased minority ownership of broadcast and other communications is a major policy objective. NTIA has devoted substantial energy and resources to measuring U.S. progress in this area. Cf. A Statistical Analysis of Minority-Owned Commercial Broadcast Station Licenses in the United States in 1991, Minority Telecommunications Development Program, National Telecommunications and Information Administration (Oct. 1991) (1991 Statistics).

However, the efficacy of the national multiple ownership rule in meeting the objective of increased minority ownership is speculative. It appears that minority ownership of broadcast television stations, while still very small, actually grew slightly from 1983, immediately before the limit on national ownership was changed from seven to twelve stations, through 1991. Compare National Association of Broadcasters, Minority Broadcasting Facts, Sept., 1986, at 8 (1.8% of all U.S. broadcast television stations in 1983 were owned by minorities) with 1991 Statistics, supra (2.8% of all commercial U.S. broadcast television stations in 1991 were owned by minorities).

Moreover, we believe the rule must be evaluated in light of its overall effect on the television industry. As we have shown, the rule prevents broadcasters from realizing efficiencies that could benefit all viewers. In the long run, neither small business and minority broadcasters nor their viewers benefit from regulatory policies that impair the efficiency and competitiveness of over-the-air television stations.

By repealing the national multiple ownership rule at this time, the Commission would respond most directly to the changed video marketplace that we have described, and would limit the longer-term negative consequences of retaining even a modified restriction. We recognize, however, that the Commission may conclude that immediate elimination of the rule is too dramatic a change in its regulation of the broadcast television industry. If that is the case, we suggest that the Commission take a phased approach, initially increasing the limits and then reviewing marketplace conditions every two years to further modify or eliminate the rule. As an initial change, raising the station ownership limit to twenty-four and the audience reach cap to forty percent would reasonably reflect current marketplace realities[31] and provide the potential for some benefits to the

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NTIA believes that the Commission should pursue less burdensome and more effective ways of attempting to pursue the goal of greater small business, and minority, broadcast ownership. In this regard, we agree with the Commission that the single greatest impediment to greater minority participation in the communications industry is lack of access to capital. See Radio Report and Order, 7 FCC Rcd at 2770. We are encouraged that the Commission has sought comment on actions it might take to foster the availability of capital in the broadcast industry. Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, Notice of Proposed Rulemaking and Notice of Inquiry, 7 FCC Rcd 2654, 2659 (1992). We suggest that the Commission closely monitor the effect of its television rules on diversity and competition in the television broadcast industry.

31/ According to 1991 Arbitron data, television broadcast stations in the top 24 television markets reach 45.363 million TV households, or 49.1% of the 92.455 million TV households in the United States. 1992 Television & Cable Factbook, at A-1 to A-4.

public prior to further review in two years of the need for the rule.

III. THE COMMISSION SHOULD MODIFY THE DUOPOLY RULE TO ALLOW INCREASED COMMON OWNERSHIP OF TELEVISION STATIONS IN LOCAL MARKETS

The duopoly rule prohibits ownership of cognizable interests in television stations with overlapping Grade B contours.[32/] The original purpose of the rule was "to promote the dual goals of economic competition and diversity of program and service viewpoints."[33/] The Commission proposes to relax the rule on the basis that common ownership of television stations in the same community allows the greatest possibility for economic efficiencies. It also states that because of increased levels of competition in local markets, the role of the duopoly rule in meeting diversity and competition concerns is diminished.[34/]

NTIA supports the Commission's assessment. As has been well documented, the number and variety of media sources in today's marketplace have grown sufficiently since the duopoly rule was adopted in 1964 to provide numerous diverse ways of meeting local

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32/ 47 C.F.R. § 73.3555(a)(3) (1991). See supra note 2, for a definition of a cognizable interest.

33/ Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules, First Report and Order, 4 FCC Rcd 1723 (1989).

34/ Notice, 7 FCC Rcd at 4115.

demand for information.[35] In addition to broadcast television outlets, Americans can receive information from cable television, home satellite dishes, VCRs, and computer databases, as well as broadcast radio and print media.

Even within the broadcast television industry, the number of information outlets has grown. The number of independent television broadcast stations has increased from ninety in 1971 to approximately 422 in 1991.[36] More than half (fifty-eight percent) of all households now receive at least ten over-the-air signals, compared to four percent in 1964.[37] Moreover, cable systems, with their carriage of cable networks, distant signals, and pay services, in addition to local broadcast signals, are becoming the primary means of transmitting television into American homes. As noted above, in 1991, cable systems provided service to over sixty percent of all television households.[38] In 1985, the average cable system could deliver nineteen channels to U.S. homes;[39] in 1990, the average household could receive

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35/ See supra at pp. 6-8.

36/ 1992 INTV Census, at 3. Such stations include affiliates of the Fox Network, which, as the "fourth" broadcast television network, has adopted a strategy of focusing on younger viewers.

37/ Notice, 7 FCC Rcd at 4115.

38/ See, e.g., Broadcasting, Feb. 17, 1992, at 60 (approximately 61% homes passed); NBC Television Comments, supra note 15, at 18 (approximately 64% penetration).

39/ NBC Television Comments, supra note 15, at 17.

thirty-three channels,[40] and, with the advent of video compression, systems have been proposed that will be able to offer 150 channels or more.[41] The greater number of channels and program service offerings has encouraged cable operators to offer "narrowcast" programming that is highly valued by discrete segments of the population, including sports (ESPN, regional sports networks, as well as much of the programming on USA Network and the various "superstations"), public affairs and news (C-Span, CNN), minority programming (Black Entertainment Television, Univision), educational programming (The Learning Channel, The Discovery Channel), health and medicine (Lifetime) and financial news (Dow Jones Cable News).[42] Moreover, cable operators in urban markets are increasingly producing local news.[43] Due to the introduction of new viewing options, local markets for programming are sufficiently diverse and the advertising market sufficiently unconcentrated, that the original justification for the duopoly rule is no longer as compelling.

40/ Id. at 16-17.

41/ Broadcast Television Report, supra note 14, 6 FCC Rcd at 4035; Moshavi, Time Warner Unveils 150 Channels, Broadcasting, Dec. 23, 1991, at 18.

42/ 1991 Cable & Television Factbook, at C-58 to C-90.

43/ News 12, a 24-hour local cable news channel, has been serving the Long Island market since 1987. Pearl, Local News Stymies Many Cable Firms, Wall St. J., June 18, 1991, at B1; Goldman, Broadcasters, Cable Enter 'Era of Blur', Wall St. J., Sept. 28, 1989, at B1. In Washington, D.C., Allnewsco Inc. started a 24-hour local cable news channel in October, 1991. Thompson, Time Warner Sets News Channel for NYC, Multichannel News, May 20, 1991, at 1.

Narrowing the rule can benefit broadcasters and viewers alike. As the Commission points out, group ownership in the local market will permit economies of scale in administrative, newsgathering, and production functions, which may enable group owners to improve local service.[44/] As the Broadcast Television Report indicates, many television broadcasters are experiencing financial difficulties.[45/] Relaxing the rule would provide these stations greater flexibility to adapt to current market conditions. The efficiencies that greater group ownership would allow should also help broadcasters to convert efficiently to broadcast ATV technology.[46/] If group owners are able to realize cost savings through consolidation, they should be able to more easily afford the costs of the transition to ATV.

44/ Notice, 7 FCC Rcd at 4115.

45/ Broadcast Television Report, supra note 14, at 4025-28; see also Foisie, Network Revenue Barely Budges, Broadcasting, Aug. 17, 1992, at 31; Foisie, TV Station Profitability: Half Full or Half in the Red?, Broadcasting, Aug. 10, 1992, at 32.

46/ Under the Commission's pending proposal for ATV development, all broadcasters would appear to be required to convert to ATV at a specific date or forfeit their NTSC channels. Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Second Report and Order/Further Notice of Proposed Rulemaking, 7 FCC Rcd 3340 (1992) (ATV Second Report and Order/Further Notice). NTIA has recommended that broadcasters should be given a choice of offering NTSC or ATV service and surrendering the unwanted channel at any time up to an "election" deadline. Comments of the National Telecommunications and Information Administration at 10-13 (filed July 17, 1992) in ATV Second Report and Order/Further Notice.

Another potential benefit of relaxation of the duopoly rules is that a single broadcaster owning more than one station in a local market might produce more diverse programming than several independently owned television stations. A group owner could have a greater incentive to differentiate the programming on its stations in order to maximize its audience share, and hence its profits.[47/]

For all of the reasons discussed above, NTIA concludes that the restrictions in the current duopoly rule should be narrowed. We believe that, in some markets, the degree of program diversity for viewers and the lack of concentration in local advertising markets appear to render the rule unnecessary and would support simply eliminating it. However, due to the importance of the structure of local television markets to these issues,[48/] we propose that the Commission substantially modify the duopoly rule at this time. Such modification would permit the Commission to conform its rules to reflect more accurately the competitive realities of the current video marketplace, while at the same

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47/ Network Inquiry, supra note 23, at 366, n.129 (citing P. Steiner, Program Patterns and Preferences, and the Workability of Competition in Radio Broadcasting, Q. J. of Econ. 66 (1952); J. H. Beebe, Institutional Structure and Program Choices in Television Markets, Q. J. of Econ. 15, 18-19 (1977).

48/ Because local television stations are the primary source of news to a majority of television viewers, we are particularly concerned about the effect of simply eliminating the rule on the diversity of sources of news and informational programming.

time recognizing that for at least some markets, a local (as opposed to a national) limitation on ownership could further the Commission's goals of preventing undue economic concentration and promoting programming diversity.

The Commission presents various options for narrowing the rule: changing from Grade B to Grade A the signal contour used to determine whether a prohibited overlap occurs;[49/] permitting common ownership only of UHF television stations with overlapping contours; permitting common ownership of a UHF and a VHF station, if a minimum number of separately owned stations remain after the proposed combination; and tying the number of stations one entity can own to the total number of stations in the market.

NTIA believes that none of these options is fully adequate. First, changing the rule to prohibit common ownership of stations with overlapping Grade A contours preserves many of the problems of the current rule. This revision would continue to use radio signal contours as a surrogate for determining the effect of a station on competition and diversity. This approach is very imprecise. Contours provide only an indirect measure of the possible audience that a broadcaster can reach. They do not reflect the physical and geographical features of any market.

49/ Although a variety of factors, such as terrain, antenna height, and strength determine the coverage of Grade A and B contours, very generally, the average distances to the Grade A and Grade B contours are approximately 35 miles and 55 miles, respectively.